

(2) In addition to the channels for educational and governmental access programming specified in subsection (a)(1), the City may require the Franchisee to make available additional standard 6-MHz equivalent video channels, up to a maximum of four (4) total additional channels, for educational or governmental access programming, whenever any channel set aside for such programming, on average over a consecutive 10-week period, meets the following conditions:

(A) the channel shows at least 28 hours per week during prime time of first-run programming or programming that has been shown once previously in the City, or both; and

(B) the channel shows at least 50 hours per week of programming of any kind.

(3) As used in this subsection (a), "prime time" shall mean 6 p.m. to 11 p.m. for all channels provided pursuant to subsection (a)(1) or subsection (a)(6), except governmental access channels for which "prime time" shall mean 7 p.m. to 12 p.m.

(4) The Franchisee shall make any additional channel required by the City under subsection (a)(2) or subsection (a)(6) available within six (6) months of the city's determination to require it.

(5) All access channels required by subsections (a)(1), (a)(2) and (a)(6), and all Alexandria Community Channels provided pursuant to Section (6)(b), shall be provided as part of the Franchisee's basic cable service, as that term is defined in 47 U.S.C. § 522, unless the City determines otherwise.

(6) If, at any time during the franchise term, the City determines, in its sole discretion, that community needs and interests require one or more channels to be set aside for access and use by the general public, including groups and individuals, on a non-discriminatory basis and without editorial control by the Franchisee, the City may require the Franchisee to set aside one standard 6-MHz equivalent video channel for such access and use. The City may require the Franchisee to make available an additional standard 6-MHz equivalent video channel for public access and use whenever the initial public access channel made available under this subsection (a)(6) meets the conditions identified in subsections (a)(2)(A) and (a)(2)(B).

(7) Notwithstanding the provisions of subsection (a)(6), at no time shall the Franchisee be required to make available more than eight educational, governmental or public access channels on the Cable System.

(b) Local Origination Programming:

(1) During the Franchise term, the Franchisee shall provide thirty (30) or more hours per week of Local Origination Programming on the Alexandria Community Channel, at least ten (10) hours of which (subject to the phase-in schedule in subsection 6(b)(2)) shall consist of Local Origination Programming that has been produced by the Franchisee, is intended for use in the City and is of specific local interest to residents of the City, and has not previously been transmitted on the Cable System ("First-Run LO Programming").

(2) The Franchisee may phase in its provision of the ten (10) hours of First-Run LO Programming specified in subsection (b)(1) in the following manner:

(A) During the first year after the effective date of this Agreement, an average of at least three (3) hours of First-Run LO Programming must be provided each week;

(B) During the second year after the effective date of this Agreement, at least six (6) hours of First-Run LO Programming must be provided each week; and

(C) In the third year after the effective date of this Agreement and thereafter, at least ten (10) hours of First-Run LO Programming must be provided each week.

(3) In any week during which a local, state or national election is conducted in Alexandria, the Franchisee shall provide, as part of the required ten (10) hours of First-Run LO Programming, live coverage of the City's election returns.

(4) All programming provided pursuant to this subsection (b) shall be of a quality at least equivalent to the Local Origination Programming produced on the Cable System during 1993. The Franchisee shall engage sufficient personnel and shall maintain sufficient equipment to comply with the programming requirement of this section or, if greater, with the public demand for Local Origination Programming services.

(5) The Franchisee shall make the schedule of Local Origination Programming available to all Subscribers and to appropriate news sources, in the same manner as it does all other programming on the System.

(c) *Capital Grants for Access Equipment and Facilities:*

(1) The Franchisee shall provide a capital fund to the City of \$1,000,000 to be used by the City, in its sole discretion, for access equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), for the renovation of facilities used in or related to access programming, and/or for use of the Institutional Network (including, but not limited to, computers and other Network terminal equipment). The Franchisee shall, at the City's request, provide the City with amounts from this fund in cash or expend such amounts to purchase equipment on the City's behalf, and the entire amount of this fund shall be available for the City's use within thirty (30) days of the effective date of this Agreement.

(2) For each year of the franchise term, beginning with the fourth year, the Franchisee shall pay a capital grant to the City, in addition to the amount specified in subsection (c)(1), that may be used, in the City's sole discretion, for some or all of the purposes described in subsection (c)(1). Said grant shall be \$500,000 adjusted annually for any inflation occurring between the effective date of this Agreement and the start of the year in which the payment is due; provided, that such payment shall, in no event, (i) be less than two percent (2%) of the Franchisee's Gross Revenues in the fiscal year immediately prior to the year in which the payment is due, or (ii) more than three percent (3%) of such Gross Revenues. The annual inflation adjustments required by this subsection (c)(2)

shall be based upon the Gross National Product Fixed Weight Price Index ("GNP-PI"). Payment of such grant shall be made in two equal installments for each year in which it is due, the first of which shall be within 30 days of the beginning of that year, and the second of which shall be six months thereafter.

(3) Beginning in the tenth year of this Agreement, the Franchisee shall expend, at the City's request, up to the sum of \$500,000 adjusted annually for any inflation occurring between the effective date of this Agreement and the end of the ninth (9th) year of this Agreement to upgrade the Institutional Network, including, but not limited to, all Network control and remotely-controlled route switching, as well as all radio-frequency-to-optical and optical-to-radio frequency conversions, and all equipment required for such control and switching within the Network, provided that the City contributes a matching amount. Such fund shall be in addition to the amounts specified in subsections (c)(1) and (c)(2). The annual inflation adjustments required by this subsection (c)(3) shall be based upon the GNP-PI.

(4) The City and the Franchisee agree that, if the Franchisee elects at any time to pass through to Subscribers any of the cost of the capital fund, of the capital grants and/or of the matching fund addressed in this subsection (c), (i) the amount of any such pass-through shall be governed by the applicable provisions of law, including FCC regulations, if any, in effect at the time of the desired pass-through, (ii) any such pass-through shall not be itemized on Subscriber bills, and (iii)

the City shall not, as part of any FCC rule-making proceeding, oppose the inclusion of such costs as externals under FCC regulations.

(d) *Equipment Repairs and Replacement:* Throughout the Franchise term, the Franchisee shall provide for the timely repair and replacement, as that term is defined in Section 5(b)(5), of all equipment (including, but not limited to, studio and portable production equipment, editing equipment, program playback equipment, and switching and multiplexing equipment) acquired using the capital fund specified in Section 6(c)(1), except equipment installed or used in a Current or Future Facility following, or "downstream" from, any switching and multiplexing equipment used in the Institutional Network. The Franchisee shall, no later than thirty (30) days after the effective date of this Agreement, enter into an agreement with the City to provide for the repair and replacement of such equipment. The agreement shall, at a minimum, provide, with respect to the equipment subject to this subsection (d), for capital support for the following:

(1) Prompt repair or replacement of non-serviceable equipment;

(2) Prompt replacement of irreparable equipment with equipment of similar quality and capabilities;

(3) Insurance to cover equipment damage, breakage, theft or loss of equipment; and

(4) An annual review by the Franchisee and the City, no later than the end of the second quarter of the Franchisee's fiscal year, of projected equipment replacement needs.

(e) *Access and Program Support:* The Franchisee shall make available sufficient staff to provide training to members of the City staff in the use of production equipment and assistance in the production of programming on the educational and governmental access channels made available pursuant to Section 6(a), to provide training to members of the public in the use of production equipment and assistance in the production of programming on the Alexandria Community Channel, to provide community education and outreach, to maintain all equipment used in the production of programming on the educational and governmental channels, to provide for the check-in and check-out of such equipment, to schedule the use of the Franchisee's facilities by persons other than employees of the Franchisee producing Local Origination Programming, and to perform related matters, up to a maximum staff requirement of one full-time equivalent staff person. In addition, each calendar year the Franchisee shall produce up to six (6) thirty-minute programs for the City, at the City's request. In the event the City requires the provision of one or more public access channels pursuant to Section 6(a)(6), the provisions of this subsection (e) shall extend to members of the public and shall apply to such channels.

(f) *Return Feed From Facilities:* The Franchisee shall provide all necessary technical equipment and support to provide a high-quality return feed of cable signals from all current and

Future Facilities to the Cable System headend and a feed of all downstream channels made available pursuant to Section 6(a) to such facilities. The return feed shall be constructed and activated during the System upgrade required by Section 5(a), and shall permit signals to be switched to any of the downstream channels made available pursuant to Section 6(a).

(g) *Management of Channels:* The City may designate one (1) or more entities, including a non-profit access management corporation, to manage the use of all or part of the Institutional Network and the educational and governmental access channels provided under Section 6(a) of this Agreement, including any channels required to be set aside pursuant to Section 6(a)(6).

(h) *Governmental Programming Services:* The Franchisee shall, at its sole cost and expense, and at the City's request, provide at least the following services to be distributed on the Governmental access channel; provided that, absent a substantial need, the City may require the Franchisee to provide live coverage of only one of the following events at a time and will, upon the Franchisee's request, identify which such event shall be covered in case of a conflict:

(1) Live coverage of all City Council meetings (including Council work sessions conducted at City Hall) and all Council public hearings, including closed captioning for up to four (4) such meetings or hearings a year as specified by the City;

(2) Live coverage of all Planning Commission and Board of Zoning Appeals public hearings conducted at City Hall;

(3) Live coverage of the T.C. Williams High School graduation; and

(4) Live coverage of all School Board meetings and public hearings.

(i) *Educational Programming Feed*: The Franchisee shall make available on both the Subscriber network and the Institutional Network, at the City's request, one educational training and programming feed that is reasonably accessible from any domestic satellite using Ku-band, plus one other educational training and programming feed that shall be designated by the City from time to time and shall be reasonably accessible from any domestic satellite using C-band.

7. Franchise Fee.

Each year during the Franchise term, as compensation for use of Public Rights-of-Way, the Franchisee shall pay to the City, on a quarterly basis, a Franchise fee in an amount not less than, nor more than, three (3) percent of the Franchisee's Gross Revenues; provided, that, in the event the City grants a franchise authorizing another franchisee to utilize the Public Rights-of-Way for purposes of constructing, operating and maintaining a Cable System, the Franchisee shall not be required to pay a franchise fee on the portion of its Gross Revenues attributable to its provision of Other Service, unless such other franchisee is required to pay a franchise fee on said portion of its Gross Revenues, in which case the fee payable by the

Franchisee, as a percentage of said portion of its Gross Revenues, shall not exceed the percentage payable by the other franchisee on the same portion of its Gross Revenues. Each quarterly payment under this section shall be made by the Franchisee within 30 days of the final day of the quarter to which it relates, and shall be accompanied by a statement, certified by the Franchisee's chief financial officer, that the figure reported by Franchisee as its Gross Revenues for the quarter is true and correct. The City shall have the right, upon twenty-four hours written notice, to inspect, during normal business hours and at such location as the City may designate, all books, receipts, financial statements, contracts and like materials which may be relevant to the computation of any Franchise fee payment made under this Agreement.

8. Liquidated Damages.

Because the Franchisee's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Franchisee agree to the following liquidated damages for the following violations of the Franchise and of this Agreement, which represent both parties' best estimate of the damages resulting from the specified violation. To maintain that estimate, the parties agree that the liquidated damage amounts are in 1994 dollars and shall be increased each year by the increase in the GNP-PI.

(a) For failure to submit plans indicating expected dates of installation of various parts of the System: \$100/day for each violation for each day the violation continues;

(b) For failure to commence operations in accordance with the requirements of the Franchise or this Agreement: \$500/day for each violation for each day the violation continues;

(c) For failure to substantially complete construction in accordance with the Franchise or this Agreement: \$500/day for each violation for each day the violation continues;

(d) For transferring the Franchise without approval: \$500/day for each violation for each day the violation continues;

(e) For failure to comply with requirements for public, educational and governmental use of the System, as specified in the Franchise or this Agreement: \$500/day for each violation for each day the violation continues;

(f) For failure to supply data required by the City in connection with installation, construction, Subscribers, finances, financial reports or rate review, as required by the Franchise or this Agreement: \$100/day for each violation for each day the violation continues;

(g) For violation of customer service standards, as contained in the Franchise or this Agreement: \$100 per violation; and

(h) For any other material violation of the Franchise or this Agreement for which actual damages may not be ascertainable: \$100/day for each violation for each day the violation continues.

9. Miscellaneous Provisions.

(a) *Governing Law:* This Franchise Agreement shall be governed in all respects by the law of the State of Virginia.

(b) *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Franchisee shall be mailed to:

Jones Intercable, Inc.
617 South Pickett Street
Alexandria, Virginia 22304

with a copy to:

Jones Intercable, Inc.
9697 East Mineral Avenue
Post Box 3309
Denver, Colorado 80155
Attention: Legal Department

(2) Notices to the City shall be mailed to:

City Manager
City of Alexandria
City Hall
301 King Street
Alexandria, Virginia 22314

with a copy to:

City Attorney
City of Alexandria
City Hall
301 King Street
Alexandria, Virginia 22314

(c) *Time of Essence; Maintenance of Records of Essence:* In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of

the essence with respect to the performance of Franchisee's obligations under Sections 2(n), 5(a), 5(b), 5(c), 6(b), 6(c), 6(f), 6(h) and 7 of the Agreement. As a result, the Franchisee's failure to complete performance of any of the obligations imposed by such sections within the time specified shall constitute a material breach of this Agreement.

(d) *Captions:* The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

(e) *Other Telecommunications Services:* The Franchisee shall be given the opportunity to participate in any bidding process conducted by the City for Other Service. At least ten (10) calendar days before awarding any contract for such services on a sole source basis, the City shall provide the Franchisee with a written notice of the City's intent to award the contract and shall provide the Franchisee with at least five (5) calendar days to comment on the contract.

(f) *Consultants' Fees and Costs:* Notwithstanding any provision in the Cable Ordinance to the contrary, the fees and costs incurred by the City in retaining consultant services in conjunction with matters affecting the Franchisee, as authorized by the Ordinance, shall be shared equally by the City and the Franchisee; provided, that the Franchisee's obligation for such fees and costs shall not exceed \$200,000 over the term of this Agreement.

(g) *Proprietary Records:* Notwithstanding any provision in the Cable Ordinance to the contrary, with respect to documents and other tangible materials which contain information claimed by the Franchisee, and confirmed by the City, to be proprietary, and to which the City has a right of access under the Ordinance, any copy of such documents or materials that is requested by the City shall be placed with a third party mutually agreeable to the Franchisee and the City, and, with respect to any such copy, said third party shall provide access to it to the City, but shall not re-copy it for any Person, including the City, without the consent of the Franchisee and shall not make it available to any Person other than the City without the consent of the Franchisee.

(h) *Transfer of Franchise:* Notwithstanding any provision in the Cable Ordinance to the contrary, the term "Transfer," as used in the Ordinance and as applied to the Franchisee and its Cable System, shall, for so long as the Franchisee is under the control of Jones Intercable, Inc., mean a transaction in which any of the following occur:

(1) control of the a Franchisee or control of Jones Intercable, Inc., which as of the effective date of this Agreement wholly owns and controls the Franchisee, is transferred from one Person or group of Persons acting in concert to another Person or another group of Persons acting in concert;

(2) any of the rights and/or obligations of the Franchisee under the Franchise and/or under this Agreement are assigned or otherwise transferred, whether directly or indi-

rectly; provided, that the mortgage or pledge of this Franchise or the Cable System shall not be deemed a "Transfer"; or

(3) one or more general partners, with management responsibilities, are removed from or added to the Franchisee. "Control," for purposes of this definition, shall mean the legal or practical ability to exert actual working control over the affairs of the Franchisee, whether directly or indirectly and whether by contractual agreement, by majority or lesser ownership interest or by any other means.

AGREED TO THIS ____ DAY OF _____, 1994.

CITY OF ALEXANDRIA, a municipal
corporation of Virginia

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

JONES INTERCABLE OF ALEXANDRIA, INC.,
a Colorado corporation

By: _____

Approved Resolution No.

BOARD OF ESTIMATE

City of New York

Granting

METROPOLITAN FIBER SYSTEMS OF NEW YORK, INC.

a franchise to install and operate a fiber optic telecommunications network in the Boroughs of Brooklyn, the Bronx, Queens and a certain area in the Borough of Manhattan.

See Minutes: April 26, 1990 (Cal. No. 257)
 May 10, 1990 (Cal. No. 51)
 June 7, 1990 (Cal. No. 45)
 June 21, 1990 (Cal No. 68)

WHEREAS, by resolution adopted May 10, 1990 (Cal. No. 51), the Board of Estimate entered on its minutes an authorizing resolution and accompanying proposed contract and did set June 7, 1990 as the date for a public hearing on this resolution and accompanying proposed contract; and

WHEREAS, Said hearing was continued to June 7, 1990 (Cal. No. 45), and June 21, 1990 and was closed on that date; now, therefore, be it

RESOLVED, That the Board of Estimate of The City of New York hereby grants to Metropolitan Fiber Systems of New York, Inc. the franchise and right to install and operate a fiber optic telecommunications network in the Boroughs of Brooklyn, the Bronx, Manhattan (except for that portion of the Borough of Manhattan which is the subject of said company's franchise agreement approved by the Board of Estimate on March 8, 1990), and Queens, upon and subject to all the terms and conditions contained in the accompanying proposed form of contract, and that this resolution shall be duly certified and presented to the Mayor for his approval, and, upon such approval, the Mayor of The City of New York be and he hereby is authorized to execute and deliver the accompanying contract in the name and on behalf of The City of New York, and that this resolution shall be null and

void if Metropolitan Fiber Systems of New York, Inc. shall fail on its behalf to properly execute said contract in duplicate and deliver the same to this Board within forty-five (45) days after the approval of this resolution by the Mayor or within such further time as the Board may grant by resolution; and, be it further

CITYWIDE

FRANCHISE AGREEMENT

Between

THE CITY OF NEW YORK

and

METROPOLITAN FIBER SYSTEMS
INC.

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SCHEDULE OF APPENDICES

- Appendix A Backbones in the Franchise Area
- Appendix B-1 The Initial Backbone (Midtown
Backbone, Harlem Backbone and Bronx
Backbone)
- Appendix B-2 The Midtown Backbone
- Appendix C The City Network
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Pledges, and Leases

THIS AGREEMENT, executed in duplicate this ____ day of _____, 1990, is by and between THE CITY OF NEW YORK (hereinafter referred to as the "City"), by the Mayor of the City (hereinafter referred to as the "Mayor"), acting in accordance with the authority of the Board of Estimate of the City (hereinafter referred to as the "Board"), party of the first part, and METROPOLITAN FIBER SYSTEMS OF NEW YORK, INC., a corporation organized and existing under the laws of the State of Delaware, whose principal place of business is located at 50 Broadway, New York, New York 10004 (hereinafter referred to as the "Company"), party of the second part.

W I T N E S S E T H:

WHEREAS, pursuant to the City Charter, the Board has the exclusive power on behalf of the City to grant franchises or rights or make contracts providing for or involving the occupation or use of the Streets (as defined in Section 1 hereof) and to give the consent of the City to any franchise or right of any kind or nature whatsoever for or relating to the occupation or use of the Streets, including renewals thereof; and

WHEREAS, the Company has submitted to the City its Bidder, Proposer, and Subcontractor Qualification Application pursuant to the Mayoral Directive No. 86-5 (December 30, 1986) and the Vendex form pursuant to the Bureau of Franchise's request, and